

SENATE BILL REPORT

SB 6401

As of January 30, 2008

Title: An act relating to civil liability in community supervision settings.

Brief Description: Regarding civil liability for the state and local governments for injuries caused by criminal offenders under community supervision.

Sponsors: Senator Carrell.

Brief History:

Committee Activity: Human Services & Corrections: 1/29/08.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Staff: Shani Bauer (786-7468)

Background: In 1961, the Legislature waived its sovereign immunity, providing that the state of Washington is liable for damages arising out of its tortious conduct to the same extent as if it were a private person or corporation. In 1967, the Legislature passed a similar waiver of immunity for local governments.

Generally, a person does not have a duty to protect others from the criminal acts of third persons. Washington courts have recognized an exception to this general rule where a special relationship exists between the person and the third party. Under this exception, a governmental entity can be held liable for the acts of a criminal offender it is supervising if the governmental entity fails to adequately supervise the offender and that lack of supervision results in harm to another person. Government liability in this context is based on the premise that the government has a take charge relationship with the offender, and therefore must exercise reasonable care to control the known dangerous propensities of the offender.

A take charge relationship is established by the terms enumerated in the conditions for release. The court has held that once a take charge relationship is established, the state's duty is broader than simply protecting against the criminal act that triggered the offender's supervision. The state has the duty to take reasonable precautions to protect against any reasonably foreseeable danger posed by the offender.

Under current law, counties that provide misdemeanor supervision services are not liable for damages based on the inadequate supervision or monitoring of a misdemeanor defendant unless the inadequate supervision or monitoring constitutes gross negligence. Negligence is defined as the failure to exercise reasonable care. Gross negligence is the failure to exercise slight diligence or care.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The Legislative Task Force on Community Custody and Community Supervision (Task Force) was convened in 2007. The Task Force recognized the need for community corrections officers and field supervisors to make supervision decisions based on the individual behavior of offenders rather than the fear of liability and recommended the Legislature adopt liability protection to accomplish this purpose.

Summary of Bill: State and local governments and its employees are not liable for injuries to persons or property caused by:

- a juvenile under the jurisdiction of the Juvenile Rehabilitation Association and conditionally released or on a less restrictive alternative; and
- an offender being supervised in the community due to a misdemeanor or gross misdemeanor conviction, or due to a charge or conviction for a nonviolent offense or any charge or conviction for a property crime or crime of dishonesty.

State and local governments and its employees may be held liable for injuries to persons or property caused by an offender under the jurisdiction of the Department of Corrections (DOC) who is classified in one of the two highest risk categories identified through the risk assessment completed by DOC only if the supervising officer failed to exercise reasonable care in supervising the offender and each of the following elements is present:

- The injury-causing conduct is criminal.
- The criminal act resulting in injury or death is substantially identical to the criminal conduct resulting in the conviction for which the offender is being supervised.
- The offender has violated a crime-related prohibition of supervision.
- The supervising agency or employee knew of the violation of the crime-related prohibition; and
- The offender would have been incarcerated on the date of the conduct resulting in personal injury or death if the violation of the crime-related prohibition had been reported to a judicial or quasi-judicial entity with the authority to incarcerate the offender.

Crime related prohibitions do not include reporting requirements, employment or educational requirements, requirements to pay legal financial obligations, residency requirements, restrictions on travel, a condition to obey all laws, curfews, or any standard conditions applicable to all offenders or class of offenders.

Appropriation: None.

Fiscal Note: Requested on January 22, 2008.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: The Attorney General's office has spent a lot of time trying to balance the need for accountability for the state and the acknowledgment that the state cannot watch everyone all of the time. This bill preserves the ability for an injured party to still get recovery from the state when it fails to supervise the highest risk individuals. The state is required to expend the majority of their supervision effort on those who have shown by their conduct that they are the most deserving of being watched. This bill also requires that there be some nexus between why the state is watching the person and the

injury the he or she causes to the public. Cities and counties often get swept into the mix for liability. City and county probation officers are generally unarmed and work out of an office. They do not have folks that follow offenders around. The special relationship in this context means something different. Cities and counties continue to believe that the community is safer when offenders are watched and want to continue to do the right thing. The bill last session which gave cities and counties immunity unless it acts with gross negligence was a step in the right direction.

CON: This bill is a virtual immunity bill and essentially holds the state immune from any accountability to the public. There is a very narrow set of circumstances that would allow a victim to bring action. No matter how many conditions the state failed to enforce, the jury cannot hear that evidence. This also may encourage the state to classify offenders at a lower level in order to avoid liability. The negligent conduct may be the risk classification itself. Victims of state negligence feel like they are being singled out. If a person were injured by the negligent conduct of a private business, they would be able to obtain recovery. The threat of tort liability may prompt people to do a better job.

Persons Testifying: PRO: Rene Tomisser, Attorney General's Office; Tammy Fellin, Association of WA Cities.

CON: Larry Shannon, WA Trial Lawyers Association; Dave Johnson, WA Coalition of Crime Victims Advocates.